

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE JOINT APPLICATION)	
OF RONALD B. OUTTEN AND ARTESIAN WATER)	
COMPANY, INC., FOR THE ABANDONMENT OF)	
SERVICE BY RONALD B. OUTTEN PURSUANT)	PSC DOCKET NO. 04-CPCN-09
TO 26 DEL. C. § 203A AND THE TRANSFER)	(PARADISE ESTATES)
OF THE CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO PROVIDE)	
WATER SERVICES TO PARADISE ESTATES,)	
KENT COUNTY, DELAWARE, TO ARTESIAN)	
WATER COMPANY, INC.)	
(FILED MAY 3, 2004))	

ORDER NO. 6445

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE PUBLIC WATER UTILITY SERVICES**

This 6th day of July, 2004, the Commission finds, determines, and Orders the following:

I. BACKGROUND

1. Artesian Water Company, Inc. ("Applicant"), is a water utility providing water services for public use that are subject to the regulatory jurisdiction of this Commission over any expansion of its service territory. On May 3, 2004, the Applicant filed an Application ("Application") with the Commission seeking a Certificate of Public Convenience and Necessity ("CPCN") to expand its facilities and operations in order to provide water services to fifty-one parcels of land in the community of Paradise Estates ("Proposed Service Area"), located in Milford Hundred, Kent County, Delaware, as specifically described by the tax parcel number identifications in paragraph 6 of the Application.

2. The Application includes petitions signed by a majority of the parcel owners within the Proposed Service Area, and evidence that the required Commission notice of the Application was sent via certified mail to each owner within the Proposed Service Area. The notice explained each owner's opportunity to object, request a hearing, and "opt-out," that is, to exclude the owner's property from Applicant's Proposed Service Area.

3. A letter dated April 14, 2004 was received from Ronald B. Outten, the current owner and operator of the water system serving Paradise Estates. In that letter, Mr. Outten states that in 1993 he was granted a CPCN by the Department of Natural Resources and Environmental Control (DNREC) in 02-CPCN-13. Mr. Outten further states that it is his desire to transfer the operation of the water system to Artesian Water Company, Inc., and thereby abandon the CPCN granted to him by DNREC. On July 1, 2004, Staff received an identical, but duly notarized, letter from Ronald B. Outten fulfilling the statutory requirement for abandonment of a CPCN (*26 Del. C. § 203A(c)(2)*).

4. Staff directed the Applicant to publish notice of the Application for a CPCN and Mr. Outten's abandonment application in two newspapers of general circulation. The notice informed the public that any meritorious request for a hearing or objection must be filed with the Commission no later than thirty days from the publication, and informed the public of Mr. Outten's intent to abandon the CPCN granted to him. The notice was published in the Delaware State News and The News Journal newspapers on May 16, 2004.

5. The Commission did not receive any "opt-out" notice from any owner, any request for a hearing on the application, or any objection to the application.

II. SUMMARY OF THE EVIDENCE

6. The record in this matter consists of the Application, including Applicant's request that the Commission proceed in this matter under the informal fact-finding procedures set forth in 29 Del. C. § 10123 (¶ 3). In addition, the Application includes:

- (i) petitions signed by a majority of landowners within the Proposed Service Area (¶ 1(d));
- (ii) copies of the United States Postal Service's forms verifying that the Applicant sent, via certified mail, a Commission approved notice to all landowners of the affected parcels of the Applicant's filing for a CPCN as prescribed by Water Utility CPCN Reg. 10.109 (¶ 5);
- (iii) the County tax parcel identification numbers of the properties in the Proposed Service Area (¶ 6);
- (iv) a listing of the landowners of record of each of the parcels included in the Proposed Service Area and the tax maps locating the parcels (¶ 7); and
- (v) the Applicant's statement that its expansion of service in the parcels in the Proposed Service Area will comply with the water pressure requirements of 26 Del. C. § 403(a)&(b), and is not barred by any of the restrictions set forth in 26 Del. C. § 403(c) (¶ 8 (a)-(d));

7. The record also contains:

- (i) affidavits of publication of the public notice of the Application in the Delaware State News and The News Journal newspapers on May 16, 2004;

- (ii) Staff's correspondence to representatives of the Office of Drinking Water of the Division of Public Health, the Office of the State Fire Marshal, and the Department of Natural Resources and Environmental Control in which Staff requested that any written comments on the application be submitted to the Commission by May 24, 2004;
- (iii) Correspondence from the Office of Drinking Water of the Division of Public Health (dated May 20, 2004) reporting that they have no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (iv) Correspondence from the Office of the State Fire Marshal (dated May 11, 2004) clarifying the Agency's position that Artesian was not "extending their franchise" under its regulations. The letter does not otherwise indicate that the Office is aware of any outstanding issues relating to Artesian's ability to provide water to its customers.
- (v) A duly notarized letter dated July 1, 2004 from Ronald B. Outten, the current owner and operator of the water system serving Paradise Estates, stating his desire to transfer the operation of the water system to Artesian Water Company, Inc., and thereby abandon the CPCN granted to him by DNREC.
- (vi) Staff's July 1, 2004 memorandum of its investigation and its recommendation that the Commission approve the application and grant the requested CPCN, as well as grant Mr. Outten's request to abandon the CPCN issued to him by DNREC. In its memorandum, Staff indicates that DNREC has informed Staff that it would provide written comments on proposed CPCN applications only if it has an objection to an application. Staff notes that the Commission did not receive from DNREC any written comments on this application. Staff further reports that, based upon its review, the Applicant has complied with all the statutory and

regulatory requirements necessary for granting the CPCN.

8. Finally, the record does not contain any evidence that any person objects to the application or requests a hearing.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

9. The Commission has jurisdiction to grant the abandonment and issuance of a CPCN permitting a water utility to end its water service in order that another utility may expand its operations and facilities. The Applicant and Mr. Outten operate water systems for public use and, consequently, are water utilities.

10. First, the Applicant obtained the consent of the majority of owners of the property within the Proposed Service Area in compliance of *26 Del. C. § 203C(e)(1)(b)*. Second, the Applicant sent by certified mail an approved notice of its Application to all owners of parcels of land within the Proposed Service Area. Third, the record reflects: (a) no objection to this application; (b) no request for a hearing on this application; (c) the Applicant's statement that the Applicant will continue to meet the water pressure requirements for its existing customers; and (d) the Applicant's statement that it is not subject to any regulatory Order or finding pertaining to the quality of its service to existing customers which would preclude it from expanding its operations or facilities.

11. The Commission's Staff has investigated the Applicant and has not discovered that the Applicant is currently subject to any Commission finding that the utility is unwilling or unable to provide adequate and reliable water services to its existing customers. The present record does not provide any basis for the Commission to

believe that any further investigation into the Applicant's service quality is necessary in order to render a decision in this proceeding.

12. The Application for a CPCN was filed before there was any application to abandon service, but the Commission public notice provided adequate notice of both pending applications. While Mr. Outten never properly filed to become regulated by this Commission as a public utility, we nevertheless do not see any reason to prevent his abandonment in order to promote the transfer to a regulated water utility.

13. In summary, the Applicant has submitted the necessary proof required by the provisions of *26 Del. C. §§ 203C(e)(1), 203C(e)(1) b., & 203C(e)(3) (2002 Supp.)*, which the Commission's Staff has reviewed and found to be accurate. The Commission also finds no reason that the Applicant is not entitled to a CPCN under the provisions of either *26 Del. C. §§ 203C(f) or 203C(i) (2002 Supp.)*. Since the Applicant has satisfied the statute's requirements, the Commission shall issue a CPCN permitting the Applicant to allow Mr. Outten to abandon service and to allow the Applicant to replace Mr. Outten's service through the expansion of its operations to provide water utility services to the parcels identified in Exhibit "A" hereto.

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to *26 Del. C. § 203C(e) (2002 Supp.)*, the application for a Certificate of Public Convenience and Necessity, as filed in PSC Docket No. 04-CPCN-09, is hereby approved to the extent it is consistent with this Order, and the CPCN issued to Mr. Outten by DNREC (02-CPCN-13) is hereby abandoned and a CPCN is granted to

Artesian Water Company, Inc., to serve the area identified by the tax parcel numbers set forth in Exhibit "A" to this Order.

2. That Artesian Water Company, Inc., shall comply with any and all federal, state, county, and local statutes, ordinances, orders, regulations, rules, and permit conditions that are applicable, or may become applicable, to any matter involving water utility services provided to the service territory granted by this Certificate of Public Convenience and Necessity.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

Vice Chair

/s/ Donald J. Puglisi
Commissioner

/s/ Joann T. Conaway
Commissioner

Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

E X H I B I T "A"

**APPROVED SERVICE AREA
PARCELS WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

PARADISE ESTATES

**MILFORD HUNDRED
KENT COUNTY, DELAWARE**

KENT COUNTY TAX MAP PARCELS NOS.

MD 00-150.00-01-18.00	MD 00-150.03-01-01.00
MD 00-150.00-01-18.01	MD 00-150.03-01-02.00
MD 00-150.00-01-19.00	MD 00-150.03-01-03.00
MD 00-150.00-01-20.00	MD 00-150.03-01-04.00
MD 00-150.00-01-21.00	MD 00-150.03-01-05.00
MD 00-150.00-01-22.00	MD 00-150.03-01-06.00
MD 00-150.00-01-24.00	MD 00-150.03-01-07.00
MD 00-150.00-01-25.00	MD 00-150.03-01-08.00
MD 00-150.00-01-26.00	MD 00-150.03-01-09.00
MD 00-150.00-01-27.00	MD 00-150.03-01-10.00
MD 00-150.00-01-28.00	MD 00-150.03-01-11.00
MD 00-150.00-01-29.00	MD 00-150.03-01-12.00
MD 00-150.00-01-30.00	MD 00-150.03-01-13.00
MD 00-150.00-01-32.00	MD 00-150.03-01-14.00
MD 00-150.00-01-33.00	MD 00-150.03-01-15.00
MD 00-150.00-01-34.00	MD 00-150.03-01-16.00
MD 00-150.00-01-35.00	MD 00-150.03-01-17.00
MD 00-150.00-01-36.00	MD 00-150.03-01-18.00
MD 00-150.00-01-37.00	MD 00-150.03-01-19.00
MD 00-150.00-01-39.00	MD 00-150.03-01-20.00

MD 00-150.03-01-21.00
MD 00-150.03-01-22.00
MD 00-150.03-01-23.00
MD 00-150.03-01-24.00
MD 00-150.03-01-25.00
MD 00-150.03-01-26.00
MD 00-150.03-01-27.00
MD 00-150.03-01-28.00
MD 00-150.03-01-29.00
MD 00-150.03-01-30.00
MD 00-150.03-01-31.00